

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Franz Schwendemann	Examiner:	Daniel D. Yabut
Serial No.:	10/591,627	Group Art Unit:	3656
Filed:	September 5, 2006	Docket No.:	15407.0001USWO
Customer No.:	23552	Confirmation No.:	3314
Title:	Rotation Drive		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants request review of the Final Rejection mailed May 26, 2010 in the above-identified application.

- No amendments are being filed with this request.
- This request is being filed with a Notice of Appeal.
- The review is requested for the reasons stated on the attached sheets.
- No more than 5 pages of argument are being submitted.

Remarks

Review of the factual and legal findings of the Final Action dated May 26, 2010 are requested for the following reasons.

I. Statutes, Laws, and Rules

To render a claim obvious, one or more references must teach every claim limitation. *See* 35 U.S.C. § 103(a); MPEP § 2141.

II. Analysis

Claim Rejections – 35 U.S.C. § 103(a)

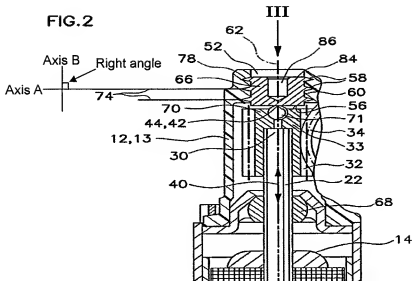
In the Final Action dated May 26, 2010, claims 14-18 and 20-31 are rejected under 35 U.S.C. § 103(a) as being obvious given U.S. Pat. Pub. No. 2004/0012280 to Frey et al. (hereinafter “Frey”) in view of U.S. Pat. No. 3,842,877 to Andrews. *See* Action, p. 2. This rejection is respectfully traversed, and the correctness of the rejection is not conceded.

The rejection should be withdrawn because: a) the justification set forth in the Action in support of the conclusion of obviousness in view of Frey and Andrews is improper as being based upon error in fact; and b) the purported combination of Frey and Andrews fails to disclose or suggest every limitation of independent claims 14 and 27.

A. Claims 14-18 and 20-26

Independent claim 14 is directed to a rotary drive configured to adjust a moving part in a motor vehicle. Claim 14 recites, in part, a plurality of individual crosspieces, each crosspiece extending to a cutting edge in a direction perpendicular to the longitudinal axis of the base.

Figure 2 of the present application illustrates one example non-limiting embodiment consistent with the recited limitation of claim 14. In this Figure (top portion reprinted below), a plurality of radial crosspieces 58 are grouped approximately around an axis 62 of a base plate 66, wherein the axis 62 is additionally aligned along a rotor shaft 22. *See also*, Published Application, ¶¶ [0023]; [0024]. In the example embodiment, each respective cross-piece 58 extends to a cutting edge in a direction perpendicular to the axis 62 of the base plate 66. *Id.*



Application, Figure 2 (top portion, annotations added). In other words, each cross-piece 58 is configured such that a hypothetical axis A (extending in a direction along a plane 74 from a corresponding cutting edge) intersects a hypothetical axis B (extending in a direction parallel to the axis 62) at a right angle.

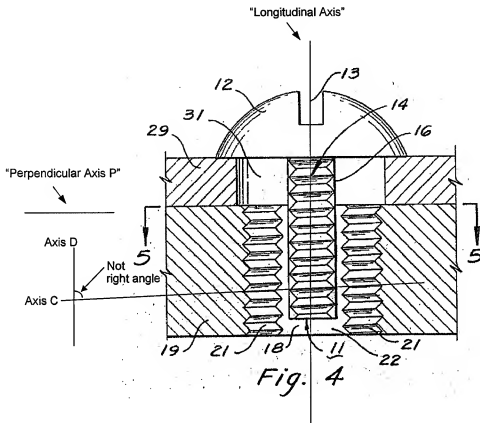
The purported combination of Frey and Andrews fails to disclose or suggest crosspieces configured as required in the recited limitation of claim 14.

The Action concedes that Frey fails to provide “a plurality of individual crosspieces, each crosspiece extending to a cutting edge in a direction perpendicular to the longitudinal axis of the base” as required in claim 14. Andrews is cited as providing the disclosure lacking in Frey. Specifically, the Action refers to Figure 2 of Andrews and states, “Although the cross-pieces 14 in Andrews are of screw type, this feature does not preclude the cross-pieces 14 from meeting the claim limitation. Namely, the cross-pieces indeed extend to a cutting edge (see at least cutting edge at 14 lying on the perpendicular axis P in Fig. Z below) in a direction perpendicular to the longitudinal axis of the base.” See Action, p. 3; pp. 8-9.

The Action therefore acknowledges that the threaded sectors 14 of Andrews are screw type (i.e., helical), yet suggests that they extend to a cutting edge ("cutting edge at 14") within the 2-dimensional plane of Figure 2 ("cutting edge at 14 lying on the perpendicular axis P") of Andrews.

Applicant asserts that this position maintained in the Action is improper as being based upon error in fact.

Specifically, Applicant refers to Figure 4 of Andrews (reprinted below) which depicts a longitudinal section along the plane 4 - 4 shown in Figure 2. *See also*, Andrews, col. 2, ll. 20-21.



Andrews, Figure 4 (annotations added). Figure 4 of Andrews clearly shows that a respective “cutting edge at 14” is angled with respect to the “perpendicular axis P” as defined in the Final Action. For example, as shown above, each “cutting edge at 14” is configured such that a hypothetical axis C (extending in a direction along a plane from a corresponding “cutting edge at 14”) intersects a hypothetical axis D (extending in a direction parallel to the “longitudinal axis of the base” as defined in the Final Action) at an angle. In other words, the “cutting edge at 14” cannot lie “on the perpendicular axis P” and “in a direction perpendicular to the longitudinal axis of the base” as suggested in the Final Action because each “cutting edge at 14” is angled with respect to the “perpendicular axis P”.

In view of the foregoing, reconsideration and allowance of claim 14, as well as all claims that depend therefrom, are requested.

B. Claims 27-31

Independent claim 27 is directed to a rotary drive that adjusts a moving part in a motor vehicle. Claim 27 recites, in part, radial crosspieces each having a cutting edge extending in a direction perpendicular to a longitudinal axis of the supporting member.

As shown above, the purported combination of Frey and Andrews at least fails to disclose or suggest such subject matter. Reconsideration and allowance of claim 27, as well as all claims that depend therefrom, are therefore requested

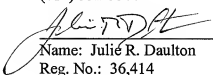
III. Conclusion

The remarks set forth above provide certain arguments in support of the patentability of the pending claims. There may be other reasons that the pending claims are patentably distinct over the cited references, and the right to raise any such other reasons or arguments in the future is expressly reserved.

Favorable reconsideration in the form of a Notice of Allowance is respectfully requested. Please contact the undersigned attorney with any questions regarding this application. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 13-2725.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: 8-26-10



Name: Julie R. Daulton
Reg. No.: 36,414
JRD:MAH